

VOLUNTARY LABOR ARBITRATION

In The Matter of the Grievance

-Between-

**LOCAL 572, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO**

and

ATLANTIC EXPRESS OF L.A., INC.

Re: Discharge of Ralph Kramden

ARBITRATOR'S OPINION AND AWARD

REPRESENTING THE PARTIES:

For the Company: Joseph M. Labuda, Esq.
Marshall M. Miller Associates, Inc.
Industrial Relations Consultants
3000 Marcus Avenue, Suite 3W3
Lake Success, New York 11042

For the Union: Lourdes M. Garcia, Esq.
Wohlner Kaplon Phillips Young & Cutler
Attorneys at Law
15760 Ventura Blvd., Suite 1510
Encino, California 91436

ARBITRATOR: Jill Klein
Attorney at Law
2470 Lambert Drive
Pasadena, California 91107-2507

INTRODUCTION

The above matter was heard on October 25, 2001, in the offices of Teamsters Local 572 at Carson, California. All parties to the dispute were present and were given the opportunity to present testimonial and documentary evidence, to call witnesses to be examined and cross-examined under oath, and to advance arguments regarding their respective positions. The parties stipulated that the matter properly was before the Arbitrator for resolution.

Following the hearing, the parties submitted closing briefs that were mailed on November 15, 2001. The brief of the Union was received on November 17, 2001. The brief of the Company was received on November 24, 2001, at which time the record of these proceedings closed. The parties agreed the decision of the Arbitrator would be due no later than thirty days after the close of the record.

ISSUES

The parties stipulated that the issue to be decided by the Arbitrator is as follows:¹

Was Mechanic Ralph Kramden discharged for just cause; if not, what is the appropriate remedy?

DECISION

¹. The Union asserted, and the Company disputed, that the following issue also should be the subject of these proceedings:

Did the Company violate Article VII Section 5 of the Collective Bargaining Agreement when it required the Grievant to submit to a drug test on May 4, 2001, pursuant to Drug & Alcohol Regulations, Use and Testing - Policies and Procedures?

Based upon said disagreement, and without waiving their respective rights, the Union and the Company opted to proceed with arbitration of the discharge issue, and agreed that the Union could go to court at a later date to attempt to compel arbitration of the drug testing issue. Based upon the foregoing agreement of the parties, I made no determination as to whether the drug testing issue properly was before me.

I find that Grievant Ralph Kramden was discharged for just cause.

APPLICABLE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article VI: Right to Hire and Fire

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Section 3. The Employer shall have the right to discharge any employee covered by this Agreement for good cause. The Union shall have the right to challenge such discharge within ten (10) days thereof, and in the event that the Union challenges such discharge, the same shall be adjusted as a grievance as hereinafter provided in this Agreement.

....

Article IX: Discipline and Discharge

Section 1. Just Cause: Employees may be disciplined or discharged only for just cause.

Section 2. Summary Discharge: Occurrences of any of the following violations, because of their seriousness, will result in immediate discharge. These are only examples of the type of conduct which will result in immediate termination:

....

- c) Negligence or any careless action which endangers the life or safety of another person.

....

Article XVI: Grievance Procedure

....

Section 3. Grievance Arbitration: If the grievance is not resolved in the written response...., and the Union has processed the grievance in strict adherence with the express time limits in this article, the Union may file for arbitration. Such filing must take place not later than ten (10) calendar days after the date on which the written

response from the Company is due under Section 2(c).

- a) The arbitrator shall be appointed by the Company and the Union.
- b) The arbitrator shall have no authority to:
 - 1) add to, delete from, amend or in any way disregard any of the terms of the Agreement;
 - 2) accept for submission any issue other than a factual question as to whether or not a specific, written provision of the Agreement has been violated by the Company;
 - 3) fashion a remedy in any grievance in which he fails to find that the specific, written provision of the Agreement has been violated by the Company;
 - 4) accept for submission or render an award in a grievance in which the specific procedures of this Article, including the express time limits at each step, have not been adhered to;
 - 5) fashion a remedy in any grievance that is inconsistent with any of the terms or conditions of one of the Company's revenue contracts; or
 - 6) fashion a remedy in any grievance [in] which back pay is awarded retroactively for more than ten (10) days prior to the date on which the grievance was filed.
- d) The compensation of the Arbitrator shall, in all cases, be borne equally by the parties.

DISCUSSION

At all times pertinent hereto, Grievant Ralph Kramden was employed as a Mechanic B at the Long Beach, California facility of Atlantic Express of L.A., Inc., hereinafter referred to as the Company. The Company transports children to and from school in a fleet of buses that are maintained by its mechanics and driven by its drivers. The parties stipulated that the Grievant was hired by the Company on October 13, 1999.

On May 3, 2001, the Grievant performed maintenance on bus No. 44. Said maintenance involved removing and re-installing the wheels on the rear axle. The

following morning, prior to starting her route for the day, a bus driver for the Company performed a road test of bus No. 44. During the road test, it became apparent that the lug nuts on the left/driver's side rear wheel of the bus were loose; as a result, the tire tilted and vibrated and the bus shook when driven. The Grievant was suspended effective May 4, 2001, pending an investigation into the situation.² He subsequently was charged with failing to properly tighten the lug nuts on the wheel, thereby endangering the life or safety of another person as a result of his negligence or carelessness, in violation of Article IX, Section 2(c) of the Collective Bargaining Agreement, *supra*. He was discharged for said offense effective May 16, 2001.

The Union challenges the discharge, asserting that the Company has failed to establish that the Grievant was negligent or careless, or that anyone was endangered, and thus has not meet its burden of proving that there was just cause for the discipline. The Union also asserts that the Company failed to conduct a fair and thorough investigation of the charges. In addition to the foregoing, the Union urges that the Grievant was subjected to disparate treatment, in that the Company did not discipline the driver of bus No. 44 for failing to perform a thorough pre-trip inspection that would have disclosed the presence of loose lug nuts before the bus was driven, and thus would have avoided any potential danger to her life and safety.

The Company asserts that negligence on the part of the Grievant may be inferred from the presence of loose lug nuts on a part of the bus that had just been repaired by him; *res ipsa loquitur*. The Company urges that with no evidence of vandalism or sabotage, the strong and irrefutable inference to be drawn is that the tire came loose because the Grievant failed to tighten the lug nuts when he re-installed the wheel. The Company contends that the loose lug nuts caused the bus to be in such condition that the life and safety of the bus driver were endangered, as would have been the lives and safety of the children who would have ridden on the bus, had the problem not been detected before the driver left on her route. Given such gross negligence, the Company asserts that there is ample just cause for sustaining the discharge. It therefore urges that the grievance be denied.

The Grievant testified that: He has between eight and ten years of experience working as a mechanic, and has been employed by the Company since October of 1999. On May 3, 2001, he performed routine preventive maintenance on bus No. 44. As part of said maintenance, he removed the wheels from the back axle and replaced an oil seal on the right/passenger side. Said work required removing all of the lug nuts from both wheels. Once the work was done, the wheels were put back on the axle, and the lug nuts were tightened to keep the wheels in place. He customarily turns a lug nut

². Because the investigation took longer than expected, the Grievant was paid for the period of his suspension.

approximately four times with his fingers in order to get it started, and then finishes the job with a pneumatic wrench. He could think of no reason why he would failed to follow said procedure when working on bus No. 44 on May 3rd, and specifically recalls using the air gun. When he finished servicing the bus, he took it for about a one-mile road test. The bus performed well, and was then parked in front of the shop, facing Long Beach Boulevard.

Bus Driver Leslie Harris was assigned bus No. 44 on May 4, 2001. Ms. Harris testified that: She reported to work at approximately 6:30 a.m. and went to the dispatch office to get the keys for the bus. She found bus No. 44 parked in a side yard next to a gate that leads to the street, and proceeded to perform a pre-trip inspection, which she is required to do on a daily basis. Such inspection included using her fingers to make sure that none of the lug nuts on the wheels were loose. Nothing appeared out of order, including the lug nuts. Although Department of Transportation rules state that buses are not to be taken on public streets before the pre-trip inspection is completed, it was not possible to drive the bus in the yard in order to check the brakes. She therefore got into the bus and drove down Long Beach Boulevard to complete that portion of the pre-trip inspection.

Ms. Harris further testified that: She drove down Long Beach Boulevard for approximately ten feet, at a speed of between three and five miles per hour. The bus began to badly wobble back and forth, and it felt as if a wheel were about to fall off. Because there was traffic behind her she could not pull over, she immediately turned back and drove into the yard. She parked the bus, got out, and looked at the rear left wheel, where she noticed that the lug nuts were sticking half-way out and were about to fall off completely. Ms. Harris was not sure how many lug nuts are on each wheel, but thought that there might be four and that three of the four on the one wheel were loose. She then brought the situation to the attention of Lead Mechanic Chris Salazar. She was scared, shaking, and crying from the incident, and told Mr. Salazar that she could have lost her life. After getting another bus and completing her morning route, Ms. Harris returned to the yard at approximately 9:00 a.m. and filled out an incident report (Company Exhibit 1). She stated that she also turned in a Daily Vehicle Condition Report regarding her pre-trip inspection of bus No. 44; however, the Company contends that no such report exists.

Lead Mechanic Chris Salazar testified that: On the morning of May 4th, Ms. Harris approached him before leaving on her morning route and reported that a rear tire was loose on bus No. 44. He took a look and noticed that the left rear tire was leaning at a slight angle from the weight of the bus, and that the eight lug nuts on the left rear wheel were very loose. He observed that a couple of the lug nuts were about to fall off, while the others were approximately three revolutions away from falling off. He notified manager Dee Garnett, who checked the vehicle and told him to not touch anything and to not let the Grievant touch anything. He then left a message for Director

of Maintenance Michael Sagner, who had not yet arrived at work.

Mr. Salazar further testified that when lug nuts are tightened with a pneumatic wrench, they are subjected to pressure of between 160 and 180 pounds per square inch, which is more than adequate to secure them in place. When a lug nut has thus been tightened, driving cannot loosen it; even using a hand wrench will not move it. If a lug nut has been tightened only by hand, driving the vehicle a short distance will loosen it. Mr. Salazar did not know how evident it would be to a driver performing a pre-trip inspection of a stationary bus that lug nuts had been tightened only by hand.

Vice President of Operations Carla Bruno was notified by Dee Garnett on the morning of May 4th that a pre-trip inspection had revealed that bus No. 44 had loose lug nuts. Ms. Bruno testified that: She initially was led to believe that the tire had fallen off the bus. She asked if the driver or anyone else had been injured, and was told that no one had been hurt. She asked Ms. Garnett to ascertain who most recently had worked on the bus. After about fifteen minutes, Mr. Garnett called back to report that the Grievant had performed preventive maintenance on bus No. 44 the day before. As is the usual procedure with all accidents, Ms. Bruno instructed Ms. Garnett to suspend the Grievant pending an investigation, and to send him for a drug test.³ Ms. Bruno then instructed Director of Maintenance Michael Sagner to go to Long Beach and to go over bus No. 44 and its vehicle file with a fine tooth comb.

Michael Sagner testified that: He initially was notified about the problem with bus No. 44 by Dee Garnett, at which time he told her to secure all documents regarding the vehicle. He later got a second call from Ms. Garnett, who put him on a speaker phone so that he could listen in as she interviewed the Grievant, who was in her office. During a conversation that lasted between ten and fifteen minutes, the Grievant was asked by Ms. Garnett if he remembered tightening the lug nuts on bus No. 44 when he had worked on it the day before. Mr. Sagner heard the Grievant respond that he could not remember whether he had done so or not. Mr. Sagner subsequently looked at all of the documentation regarding the work that had been done by the Grievant on bus No. 44 on May 3rd, including a computer generated Transaction Report (Company Exhibit 2), a Preventive Maintenance Sheet (Company Exhibit 3), and a Combined Repair Order (Company Exhibit 4).

The Transaction Report documents that the Grievant worked on bus No. 44 from 8:53 a.m. until 10:54 a.m. on May 3, 2001. At 10:29 a.m., he started working on the rear axle, and replaced a rear seal. Mr. Sagner testified that in order to inspect each seal, it was necessary to remove the wheel, drum, inner axle, axle nut, hub, seal, and bearings, and then to replace everything in reverse order. The Preventive Maintenance

³. It is uncontroverted that the Grievant tested negative for the presence of drugs in his system.

Sheet that was filled out by the Grievant indicates that he checked the axle flanges, lug nuts, and oil hubs on the bus, and that he replaced a leaking seal on the right rear axle.

The Grievant recalled speaking to Ms. Garnett while Mr. Sagner listened in on the speaker phone. He stated that Ms. Garnett told him that loose lug nuts had been found on bus No. 44. It was his recollection that Mr. Sagner asked him whether he remembered putting the lug nuts on the wheel, and he had replied that he did. The Grievant was unable to recall what else was said during the conversation.

Mr. Sagner testified that he subsequently spoke to Chris Salazar regarding bus No. 44, and went over to inspect it the following week, after it had been repaired. At that time, Mr. Salazar gave him the eight lug nuts and bolts that had been removed from the left rear wheel, and Mr. Sagner had noted that the threads on the bolts had "rolled over," meaning that they were flattened on one side. Mr. Sagner stated that he made sure that the four bolts that had been marked up the most were saved, and disposed of the other four. At the subject hearing, I inspected the four nuts and bolts that had been saved on the instruction of Mr. Sagner. My inspection confirmed that the threads on one side of the bolts were flattened, consistent with his testimony.

Mr. Sagner further testified that following his investigation, he reported his conclusions to Ms. Bruno. He stated that he told her that he had concluded that the Grievant had pulled the wheels off the rear axle of bus No. 44 to inspect the brakes; had replaced the left wheel and gotten its lug nuts started manually; had worked on the right wheel and repaired the seal; and then had used the air gun only to tighten the lug nuts on the right wheel. In the estimation of Mr. Sagner, by failing to tighten the lug nuts on the left wheel with the pneumatic wrench, the Grievant had created a situation in which the lug nuts would have worked themselves loose as the bus was driven. Such could have caused the wheel to come off completely, resulting in the inability of the driver to control the vehicle. If the driver had made a right turn, the loss of a wheel could have caused the vehicle to turn on its side. Mr. Sagner told Ms. Bruno that a mechanic with eight years of experience never should have allowed said situation to occur. It was his opinion that the Grievant probably should be discharged for such a dangerous safety violation.

Ms. Bruno testified that: After Ms. Sagner reported back to her regarding the results of his investigation, and clarified that the tire had been at an angle to the axle but had not fallen off, she asked him to help her recall similar situations involving other mechanics. Ms. Sagner told her that all similar incidents had resulted in the immediate discharge of the employees involved. She told Mr. Sagner that she was looking for any exception to that rule; he replied that there was none. After speaking to Field Safety Supervisor Olga Rivadeneira, Safety Supervisor Karapet "Gary" Torosyan, and Dispatch Supervisor David Lepedzhyan, Ms. Bruno ultimately concurred with the recommendation of Mr. Sagner that the Grievant should be discharged. In making said decision, she took into account that the Company is part of an industry that is involved

in the transportation of children, and therefore must be very concerned with safety. The Collective Bargaining Agreement provides that there are some offenses that are so serious that they will result in immediate discharge, and gross negligence is one of them. As set forth in the Notice of Termination dated May 16, 2001 (Joint Exhibit 3), the Grievant was discharged for negligence or carelessness that endangered the life or safety of another person, in violation of Article IX, Section 2(c) of the Agreement. The Company also has a Driver and Escort Manual (Union Exhibit "A"), which serves as a handbook for all employees, including Mechanics. The Manual provides at Rule 19, Section 13 that failure to follow specified production standards can result in discipline, including discharge. By Acknowledgment dated October 14, 1999 (Company Exhibit 6), the Grievant confirmed that he had received a copy of the Employee Handbook and that he understood that he was obligated to read it and understand its contents.

Ms. Bruno further testified that: Ms. Harris, the driver of bus No. 44, was not disciplined because, in the estimation of Ms. Bruno, Ms. Harris had not done anything wrong. As a Bus Driver, Ms. Harris is responsible for making sure that the vehicle she will be driving is safe and operable, and for that reason must conduct a daily pre-trip inspection. The brake test that Ms. Harris had performed on bus No. 44 on May 4th was part of that pre-trip inspection, and it had revealed the presence of the loose lug nuts that constituted a safety hazard. Although the pre-trip inspection is supposed to be completed before a bus is taken on a public road, the bus yard was under construction in May of 2001, making it impossible to test the brakes while still in the yard. Ms. Harris therefore did nothing wrong when she drove onto Long Beach Boulevard to complete that part of the inspection. Had Ms. Harris found the loose lug nuts prior to getting behind the wheel to check the brakes, in all likelihood Ms. Bruno still would have decided to discharge the Grievant, because the bus had a major defect that could have endangered the children who were scheduled to ride on it. Only if Ms. Harrison had failed to conduct a pre-trip inspection and children had been injured as a result of the loose lug nuts would discipline of the driver have been appropriate.

Based upon the foregoing evidence, I find that it is more likely than not that the Grievant was negligent when working on bus No. 44 in that he failed to tighten the lug nuts on the left rear wheel with an air gun, thereby causing the nuts to work themselves loose as the bus was driven. In said regard, I concur with the argument put forth by the Company that this is a case of *res ipsa loquitur*; the fact that a part of the bus that the Grievant worked on on May 3rd was found to be in a dangerous condition due to human error (as opposed to a structural defect) during a pre-trip inspection the following day, leads to the logical conclusion that the Grievant most likely was responsible for the dangerous condition. The fact that the condition did not become evident during the one-mile road test conducted by the Grievant does not mean that said condition did not exist at that time; the bus merely had to be driven a little farther before the lug nuts worked themselves loose. I am persuaded by the testimony of Mr. Sagner

that a properly installed lug nut will not come loose under normal driving conditions. I also note that no evidence was presented that the bus was the victim of vandalism or sabotage. The logical inference to be drawn thus is that the Grievant failed to properly tighten the lug nuts by using a pneumatic wrench.

I was not persuaded by the testimony of the Grievant that he is able to remember using the wrench to tighten the lug nuts in question. I found his testimony to be vague and his overall recall of the events at issue poor. In contrast, I found Mr. Sagner to be a very credible witness with good recall of the events at issue. I find it significant that Mr. Sagner remembered that when the Grievant was asked on May 4, 2001, if he had used the air gun to tighten the lug nuts on bus No. 44 the previous day, the Grievant could not recall whether he had or not. I find that the Grievant logically could be expected to have the most accurate recall of the events closest in time to when they occurred. I find that if he could not remember if he used the air gun when asked on May 4, 2001, his testimony on October 15, 2001, that he specifically remembered using the pneumatic wrench to tighten the lug nuts on the left wheel on May 3rd is highly suspect.

The Union urges that the Grievant had no reason to not use the wrench; however, I find that the culpability of the Grievant does not turn on whether or not his actions were deliberate. I find that in all likelihood, the Grievant forgot to use the wrench to tighten the lug nuts on one side of the rear axle. I find that such forgetfulness constitutes negligence or carelessness, and that such is covered by Article IX, Section 2(c) of the Collective Bargaining Agreement, which the Company relied upon in making its decision that the Grievant should be discharged.

Although Ms. Harris was not actually injured when the lug nuts came loose, I find that she was endangered in that had she not been able to pull over in time, the wheel very well could have come off and thus subjected her, and others drivers in the vicinity of the bus, to possible injury. I therefore find that the negligence or carelessness of the Grievant endangered the life or safety of Ms. Harris and others, in violation of Article IX, Section 2(c), *supra*. For the foregoing reasons, I find that the Grievant was discharged for good cause.

As set forth above, the Union asserts that the discipline of the Grievant should not stand because he was treated differently, and less favorably, than a similarly situated employee. I find that the Union has failed to prove its affirmative defense that the Grievant was similarly situated to Ms. Harris, the Bus Driver. I find that Ms. Harris was required to perform a pre-trip inspection of the bus before leaving on her route, and did so. Although a visual inspection of the lug nuts, which included touching them, did not reveal that those on the left rear wheel were loose, said condition became evident as soon as she tested the brakes, which involved a short road test. Because the bus yard was under construction, I find that there was nothing improper about testing the brakes on the nearest available pavement, which happened to be Long Beach Boulevard

immediately adjacent to the bus yard. I find that the brake test was part of the pre-trip inspection, and that it accomplished its purpose in that a potentially life-threatening mechanical condition was uncovered before Ms. Harris took the bus out on its route. For said reason, I find that the Union has failed to prove that Ms. Harrison was negligent or careless, or that she endangered the life or safety of another. I therefore find that she was not similarly situated to the Grievant, and that the decision to discipline only the Grievant did not amount to disparate treatment of similarly situated employees.

Because the Grievant violated Article IX, Section 2(c) of the Collective Bargaining Agreement, and because the Agreement provides that violation of said section is considered so seriousness that it can lead to summary discharge, I find that the discharge of the Grievant was for good cause as required by Article IX, Section 1 of the Agreement.

AWARD

The Grievance is denied.

Respectfully submitted,

JILL KLEIN
Arbitrator

*December 10, 2001
Pasadena, California*